

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

CURTIS GIOVANNI FLOWERS;

Plaintiff,

v.

DOUG EVANS, in his individual capacity,
JOHN JOHNSON, in his individual capacity,
WAYNE MILLER, in his individual capacity,
and JACK MATTHEWS, in his individual
capacity;

Defendants.

Civil Action No. 4:21-cv-00110-NBB-JMV
The Hon. Neal B. Biggers Jr.

PLAINTIFF'S RESPONSE TO DEFENDANT EVANS'S MOTION TO DISMISS

COMES NOW Plaintiff Curtis Giovanni Flowers, and files this his Opposition to Defendant Doug Evans's Motion to Dismiss. Plaintiff moves this Court to deny the motion to dismiss and requests a hearing on said motion and as grounds therefore, would state as follows:

1. On September 3, 2021, Mr. Flowers filed a complaint against Evans, John Johnson, Wayne Miller, and Jack Matthews. *See* Compl., ECF No. 1. The Complaint alleges that Evans violated Mr. Flowers' Fourth, Sixth, and Fourteenth Amendment rights under the U.S. Constitution, as well as his rights under Article 3, Section 14, 23, and 26 of the Mississippi Constitution, and that his actions constitute the state-law torts of malicious prosecution, abuse of process, and false imprisonment. *Id.* ¶ 112.

2. On October 22, 2021, Evans moved to dismiss. *See* ECF No. 7. Evans argued that he was entitled to absolute prosecutorial immunity for the federal and state-law claims against him. ECF No. 8 at 1. He also argued that the state-law claims are barred by the Mississippi Tort

Claims Act (“MTCA”), the wrongful-conviction statute, and applicable statutes of limitation, and are inadequately pled. *Id.*

4. When reviewing a complaint to determine its sufficiency under Federal Rule of Civil Procedure 12(b)(6), a court “accept[s] all well-pleaded facts as true and view[s] all facts in the light most favorable to the plaintiff.” *Thompson v. City of Waco*, 764 F.3d 500, 502 (5th Cir. 2014). The court is required only to “determine whether the plaintiff stated a legally cognizable claim that is plausible, not to evaluate the plaintiff’s likelihood of success.” *Id.* at 503.

5. Mr. Flowers complaint should not be dismissed for the reasons set forth in the accompanying memorandum.

WHEREFORE, PREMISES CONSIDERED Plaintiff prays that this Honorable Court will deny Defendant Doug Evans’s Motion to Dismiss.

Dated: November 23, 2021

/s/ Robert B. McDuff
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Counsel for Plaintiff Curtis Giovanni Flowers

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

November 23, 2021

/s/ Robert B. McDuff
Robert B. McDuff

Counsel for Plaintiff Curtis Giovanni Flowers